

S-5041

1 Amend House File 2221, as amended, passed, and reprinted by
2 the House, as follows:

3 1. By striking everything after the enacting clause and
4 inserting:

5 <Section 1. Section 622.9, Code 2022, is amended to read as
6 follows:

7 **622.9 Communications between husband and wife.**

8 1. Neither husband nor wife can be examined in any case
9 as to any communication made by the one to the other while
10 married, nor shall they, after the marriage relation ceases, be
11 permitted to reveal in testimony any such communication made
12 while the marriage subsisted.

13 2. Notwithstanding subsection 1, a husband or wife may be
14 examined about, and reveal in testimony, any of the following
15 communications:

16 a. Communications of threats against the husband or wife or
17 third party.

18 b. Communications that have been transmitted or revealed to
19 a third party.

20 3. Subsection 1 does not apply in any proceeding in which
21 either husband or wife is charged with an offense against the
22 other.

23 Sec. 2. NEW SECTION. **622.31A Admissibility of evidence in**
24 **certain physical abuse and sexual offense cases.**

25 1. As used in this section:

26 a. "*Child*" means a person under fourteen years of age.

27 b. "*Cognitive impairment*" means a deficiency in a person's
28 short-term or long-term memory; orientation as to person,
29 place, and time; deductive or abstract reasoning; or judgment
30 as it relates to safety awareness.

31 c. "*Developmental disability*" means the same as defined
32 under the federal Developmental Disabilities Assistance and
33 Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in
34 42 U.S.C. §15002(8).

35 d. "*Intellectual disability*" means a disability of

1 children and adults who as a result of inadequately developed
2 intelligence have a significant impairment in ability to learn
3 or to adapt to the demands of society.

4 2. In a prosecution for physical abuse or a sexual offense
5 including but not limited to a sexual offense in violation of
6 section 709.2, 709.3, 709.4, 709.11, 709.12, 709.14, 709.15,
7 709.16, or 709.23, upon or against a child, a person with an
8 intellectual disability, person with a cognitive impairment, or
9 person with a developmental disability, the following evidence
10 shall be admitted as an exception to the hearsay rule if all of
11 the requirements in subsection 3 apply:

12 a. Testimony by the victim concerning an out-of-court
13 statement made by the victim to another person regarding the
14 occurrence of the offense.

15 b. Testimony by another concerning an out-of-court statement
16 made by the victim describing any act or detail pertaining to
17 any act which is an element of an offense charged for physical
18 abuse or a sexual offense against the victim.

19 3. The testimony described in subsection 2 shall be admitted
20 into evidence at trial as an exception to the hearsay rule if
21 all of the following apply:

22 a. The party intending to offer the statement does all of
23 the following:

24 (1) Notifies the adverse party of the intent to offer the
25 statement.

26 (2) Provides the adverse party with the name of the witness
27 through whom the statement will be offered.

28 (3) Provides the adverse party with a written summary of the
29 statement to be offered.

30 b. The court finds, in a hearing conducted outside the
31 presence of the jury, that the timing of the statement, the
32 content of the statement, and the circumstances surrounding
33 the making of the statement provide sufficient safeguards of
34 reliability.

35 c. The child, person with an intellectual disability, person

1 with a cognitive impairment, or person with a developmental
2 disability satisfies one of the following:

3 (1) Testifies at the trial.

4 (2) Is unavailable to testify but provides corroborative
5 evidence of the act which is the subject of the statement.

6 4. If a statement is admitted pursuant to this section,
7 the court shall instruct the jury that it is for the jury
8 to determine the weight and credibility to be given to the
9 statement, and in making that determination, the jury shall
10 consider the age and maturity of the child or the disability
11 of the person with an intellectual disability, person with
12 a cognitive impairment, or person with a developmental
13 disability; the nature of the statement whether consistent
14 or inconsistent; the circumstances under which the statement
15 whether consistent or inconsistent was made; and any other
16 relevant factors.

17 5. This section shall not prevent the admission of any
18 evidence based upon forfeiture by wrongdoing.>

19 2. Title page, by striking lines 1 through 5 and inserting
20 <An Act relating to evidence, including spousal privilege
21 and confidential communications between spouses, and the
22 admissibility of evidence in a prosecution for physical abuse
23 or a sexual offense upon or against a child, person with an
24 intellectual disability, person with a cognitive impairment, or
25 person with a developmental disability.>

TOM SHIPLEY